



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60, 61, and 63

[EPA-R08-OAR-2012-0764; FRL-9828-6]

Delegation of Authority to the Southern Ute Indian Tribe to Implement and Enforce National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve the Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). This request establishes and requires SUIT to administer a NSPS and NESHAPs program per EPA regulations. The delegation is facilitated by SUIT's treatment "in the same manner as a state" (TAS) document, per CAA requirements.

DATES: This rule is effective on September 6, 2013 without further notice, unless EPA receives adverse comment by August 7, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0764, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- E-mail: olson.kyle@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA-R08-OAR-2012-0764. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kyle Olson, Air Program, Mailcode 8P-AR, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6002 or olson.kyle@epa.gov

SUPPLEMENTARY INFORMATION: EPA is taking final action to approve the Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New

Source Performance Standards (NSPS). This request establishes and requires SUI to administer a NSPS and NESHAPs program per EPA regulations. SUI met the requirements of Clean Air Act (CAA) sections 111(c) and 112(l) and 40 CFR subpart E for full approval to administer CAA 111 and CAA 112 programs entirely due to its prior approval of its CAA Title V Part 70 Permitting Program. The delegation is facilitated by SUI's treatment "in the same manner as a state" (TAS) document, per CAA section 301(d)(2). This action is being taken under CAA sections 111 and 112.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The word NESHAP means or refers to National Emissions Standards for Hazardous Air Pollutants.

(iv) The word NSPS means or refers to the New Source Performance Standards.

(v) The word SUI means or refers to the Southern Ute Indian Tribe.

(vi) The word TAS means or refers to Treatment As a State

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Delegation of Authority to SUI

CAA sections 111(c)(1) and 112(l), as amended, authorize EPA to delegate authority to any state or tribal agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP. The NSPS are codified in 40 CFR part 60 and the NESHAP are codified in 40 CFR part 63. Delegation confers primary responsibility for implementation and enforcement to the respective tribal agency; however, EPA also retains the concurrent authority to enforce the standards.

With a July 3, 2012 letter, the Chairman of the Southern Ute Indian Tribe requested delegation of authority for NSPS and NESHAP, promulgated in Parts 2 and 3 of the SUI Reservation Air Program. EPA's review of SUI's program determined that it contained adequate and effective procedures for the implementation and enforcement of these federal standards. Therefore, on November 27, 2012, EPA Region 8 notified SUI that, pending publication in the Federal Register, the Tribe is authorized to accept delegation of NSPS and NESHAP standards with the following letter:

"The Honorable Jimmy R. Newton Jr., Chairman
The Southern Ute Indian Tribe
P.O. Box 737
Ignacio, Colorado 81137-0737

Re: Clean Air Act (CAA) 111 and 112, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Program Approval

Dear Chairman Newton:

I am pleased to inform you that, because the Southern Ute Indian Tribe has an approved CAA Title V permitting program, the EPA finds that the Tribe has the authority to carry out NSPS (CAA 111) and NESHAP (CAA 112) regulatory activities, and that the Tribe can begin requesting delegation of specific NSPS & NESHAP standards. The Tribe's treatment "in the same manner as a state" document has been updated to reflect this new Program approval (per CAA section 301(d)(2) and 40 CFR 49.6.)

NSPS establishes maximum emission levels for new stationary sources, and NESHAPs address the control of hazardous air pollutants through Maximum Achievable Control Technology (MACT) standards and related programs that enhance and support the NESHAP program. The Tribe is also granted automatic delegation of NESHAP (CAA 112) standards through incorporation by reference of the standards when they are adopted unchanged into the Reservation Air Code (RAC) from the federal standards. A request for delegation of specific NSPS (CAA 111) standards will require a letter to the EPA. After such request the EPA would publish a Federal Register notice containing the letter of request and an updated Code of Federal Regulations (CFR) table, and the EPA would respond by letter to the Tribe.

To approve future requests for delegation of NSPS and NESHAPS regulations the EPA will provide public notice through publication in the Federal Register as a direct final rule. A direct final rule makes CAA 111 and CAA 112 delegations effective the day of publication. However, should the EPA receive any adverse comments on the direct final rule, the delegation will be reconsidered.

For more information on this approval, please contact Carl Daly, Director of Region 8's Air Program at (303) 312-6416.

Sincerely,

James B. Martin
Regional Administrator"

III. Summary of Final Action

We are approving delegation of the CAA 111 and 112 programs (NSPS and NESHAP, respectively) to SUIT. We are approving this rule because the authority for this delegation is based entirely on SUIT's previous approval of the Part 70 permitting program [EPA-R08-OAR-2011-0015; FRL-9277-9]

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves Tribal law as meeting federal requirements and imposes no additional requirements beyond those imposed by Tribal law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). Because this rule approves pre-existing requirements and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a Tribal rule implementing a Federal standard.

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications". "Policies that have tribal implications" is

defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes”. Under Section 5(b) of Executive Order 13175, we may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or we consult with tribal officials early in the process of developing the proposed regulation. Under Section 5(c) of Executive Order 13175, we may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation. While we conclude that this action will have tribal implications, this action is not a regulation and merely approves a Tribal rule implementing a federal standard. This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act except as regards implementation of CAA 111 and 112. This action will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until

60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 60, 61, and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Chemicals, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, National Emissions Standards for Hazardous Air Pollutants, Natural gas, New Source Performance Standards, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and

roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Tribal, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

Dated: May 30, 2013.
Shaun L. McGrath,

Regional Administrator,
Region 8.

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